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 530 Original
 FILED
 JUL 29 AM 11:07
 RICHARD W. WIEBING
 U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name FOSSELMAN LORENZO JR.
 (Last) (First) (Initial)
 Prisoner Number P-13462 KERN VALLEY STATE PRISON
 Institutional Address K.V.S.P. P.O. BOX 5101 DELANO CA 93216

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

(PR)

VRW

LORENZO FOSSELMAN JR.
 (Enter the full name of plaintiff in this action.)

vs.

M.S. EVANS (WARDEN)

(Enter the full name of respondent(s) or jailor in this action)

08

3617

Case No. _____
 (To be provided by the clerk of court)

**PETITION FOR A WRIT
OF HABEAS CORPUS**

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

- (a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

SUPERIOR COURT OF STANISLAUS COUNTY, MODESTO

Court

Location

- (b) Case number, if known _____

- (c) Date and terms of sentence 12-13-02

- (d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes X No _____

Where?

Name of Institution: K.V.S.P

Address: P.O. Box 5101 DELANO CA 93216

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

CAR JACKING P.C. 215, PETITIONER DOES NOT CHALLENGE

His CRIMINAL CONVICTIONS IN THESE PROCEEDINGS, THIS PETITION IS CHALLENGING PRISON discipline.

3. Did you have any of the following?

Arraignment: Yes ☒ No ☐
 Preliminary Hearing: Yes ☒ No ☐
 Motion to Suppress: Yes ☐ No ☒

4. How did you plead?

Guilty ☒ Not Guilty ☒ Nolo Contendere ☐

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury ☒ Judge alone ☐ Judge alone on a transcript ☐

6. Did you testify at your trial? Yes ☐ No ☒

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes ☒ No ☐
 (b) Preliminary hearing Yes ☒ No ☐
 (c) Time of plea Yes ☒ No ☒
 (d) Trial Yes ☒ No ☐
 (e) Sentencing Yes ☒ No ☐
 (f) Appeal Yes ☒ No ☐
 (g) Other post-conviction proceeding Yes ☒ No ☐

8. Did you appeal your conviction? Yes ☐ No ☐

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes ☒ No ☐

Year: N/A Result: Denied

Supreme Court of California Yes ☒ No ☐

Year: N/A Result: N/A

Any other court Yes ☐ No ☐

Year: N/A Result: N/A

(b) If you appealed, were the grounds the same as those that you are raising in this

petition? Yes _____ No _____

(c) Was there an opinion? Yes _____ No _____

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes _____ No ☒

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes ☒ No _____

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: Monterey Superior Court (HC 5885)

Type of Proceeding: Habeas petition

Grounds raised (Be brief but specific):

a. Substantial Due Process Violation

b. Substantial Due Process Violation

c. _____

d. _____

Result: Denied Date of Result: 10-26-07

II. Name of Court: Court of Appeals 6th District (#032286)

Type of Proceeding: Habeas petition

Grounds raised (Be brief but specific):

1 a. Substantial Due Process

2 b. Substantial Due Process

3 c. _____

4 d. _____

5 Result: Denied Date of Result: 12-13-07

6 III. Name of Court: CALIFORNIA SUPREME COURT (S160366)

7 Type of Proceeding: Habeas Petition

8 Grounds raised (Be brief but specific):

9 a. Substantial Due Process

10 b. Substantial Due Process

11 c. _____

12 d. _____

13 Result: Denied Date of Result: 7-9-08

14 IV. Name of Court: _____

15 Type of Proceeding: _____

16 Grounds raised (Be brief but specific):

17 a. _____

18 b. _____

19 c. _____

20 d. _____

21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____ No X

24 Name and location of court: _____

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
27 support each claim. For example, what legal right or privilege were you denied? What happened?

28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: SUBSTANTIAL DUE PROCESS.

6
7 Supporting Facts: PETITIONER WAS ISSUED A RULES VIOLATION REPORT
8 (HERE-AFTER R.V.R.) IN RETALIATION FOR HIM FILING A GRIEVANCE & SENDING
9 IT DIRECTLY TO THE WARDEN. SAID R.V.R. IS SUPPOSEDLY FOR
10 PETITIONER NOT SPEAKING DURING A FACILITY INTERVIEW/INTERROGATION
11 CLAIM TWO: SUBSTANTIAL DUE PROCESS. (→ CONT. NEXT PAGE)

12
13 Supporting Facts: ON (OR) ABOUT JANUARY 19TH 2007 STAFF SERGEANT
14 J. MENSING ISSUED PETITIONER HIS 2ND RULES VIOLATION REPORT (LOG #
15 C-07-01-0044 SEE: (EX D)) IN FURTHER RETALIATION FOR
16 PETITIONER EXERCISING HIS CONSTITUTIONALLY PROTECTED RIGHTS TO
17 CLAIM THREE: (→ CONT. AT PG 6 CLAIM TWO)

18
19 Supporting Facts:

20
21
22
23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

25 BOTH GROUNDS WERE PROPERLY EXHAUSTED IN STATE COURT
26 SEE: IN RE LORENZO FUSSELLMAN JR. IN HOBBS CORPUS (S160366)
27 LEGAL ORDER ATTACHED AT: EX:1
28 AND ADMINISTRATIVE ~~REMEDIES~~ WERE EXHAUSTED EX:1

CLAIM ONE: Substantial Due process CONT'

and for petitioner choosing NOT to sign a Compatibility/Promise to behave chrono" which is not a valid rule or regulation identified in the Cal. Code of Reg. Tit 15.

On (or) about 1-7-07 petitioner received this first R.V.R. and the charge was recurring failure to meet program expectations see: EX A, supposedly ~~authored~~ authored by C/O B. Chavez on 1-4-07 from events which arose on (or) about 12-26-06, the report reads petitioner declined to speak during an interview being conducted by C/O B. Chavez, as well as, petitioner declined to sign the Compatibility/Promise to behave/waiver of rights chrono. It is the belief of petitioner that the R.V.R. was issued in retaliation for the grievance petitioner sent to warden Evans on 12-28-06 concerning his staff arbitrarily restricting petitioner's privileges & state created liberties without affording him due-process (see EX B)

On 1-11-07 Lt. J. Celaya found petitioner guilty of this false R.V.R. and imposed discipline see EX C, even though he knew or reasonably should have known that a prisoner cannot legitimately be disciplined by staff for declining to give statements, answer questions, speak in a certain fashion or sign documents during facility interviews/interrogations.

6.) CONT'

Claim Two: Substantial Due process Continued

free speech by ~~declining~~ to speak in a certain fashion during facility interviews; declining to sign documents, and petitioner's 5th Amendment rights to remain silent during official interrogations concerning matters which reasonably may be self incriminating.

In 2-22-67, LT. E. Moore found petitioner guilty of this false R.V.R. & imposed discipline See: EX E, even though he knew or reasonably should have known that this was a false R.V.R. because there's "no rule or regulation which allows staff to discipline a prisoner for not speaking or signing documents See: EX F", petitioner is informed therefore believes, there fore alleges that a conspiracy was being waged by S.V.S.P administration & their Agents against petitioner to chill his Constitutional Rights.

List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

HINES v. GOMEZ 108 F.3d 265 (9th Cir 1997) DANIELS v. WILLIAMS 474 US 327 (1986) CORNELI v. WOODS 69 F.3d 1383 (8th Cir 1995), WOODS v. SMITH 60, F.3d 1161, 1165 (5th Cir 1995)

Do you have an attorney for this petition?

Yes _____ No X

If you do, give the name and address of your attorney:

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on 7-21-08

Date

Persezo Fesech Jr.

Signature of Petitioner

(Rev. 6/02)

- SUPREME COURT ORDER

- SUPERIOR COURT ORDER

AND

(2) DIRECTOR'S level APPEAL DECISIONS

WITH RESPECT TO RVR LOG # SVSP.C-06-120042

AND RVR LOG # SVSP C07-01-044

(AND)

- COURT OF APPEALS ORDER -

Exhibit

1

S160366

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re LORENZO FOSSELMAN, JR., on Habeas Corpus

The petition for writ of habeas corpus is denied.

**SUPREME COURT
FILED**

JUL - 9 2008

Frederick K. Ohlrich Clerk

Deputy

GEORGE

Chief Justice

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

Court of Appeal - Sixth App. Dist.

FILED

DEC 13 2007

MICHAEL J. YERLY, Clerk

By DEPUTY

In re LORENZO FOSSELMAN, JR.,
on Habeas Corpus.

H032286
(Monterey County
Super. Ct. No. HC5885)

BY THE COURT:

The petition for writ of habeas corpus is denied.

(Premo, Acting P.J., Elia, J., and Duffy, J., participated in this decision.)

Dated DEC 13 2007 PREMO, J. Acting P.J.

FILED

OCT 26 2007

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

CONNIE MAZZEI
CLERK OF THE SUPERIOR COURT
NOEMI P. BECERRA DEPUTY

In re) Case No.: HC 5885
Lorenzo Fosselman, Jr.) ORDER
On Habeas Corpus.)

On August 29, 2007, Petitioner Lorenzo Fosselman, Jr. filed a petition for writ of habeas corpus.

Petitioner is currently incarcerated at Salinas Valley State Prison (SVSP) in Soledad.

Petitioner was issued two separate Rules Violation Reports for recurring failure to meet program expectations (Cal. Code Regs., tit. 15, Section 3005(b)). The first Rules Violation Report is Log No. C06-12-0043 dated January 4, 2007. The second Rules Violation Report is Log No. C07-01-0044 dated February 7, 2007.

On January 11, 2007, Petitioner was found guilty of recurring failure to meet program expectations. (See RVR Log No. C06-12-0043.) On February 22, 2007, Petitioner was found guilty of recurring failure to meet program expectations. (See RVR Log No. C07-01-0044.)

Petitioner claims that he was improperly found guilty of recurring failure to meet program expectations on January 11, 2007 and February 22, 2007 respectively.

Petitioner's claim with respect to RVR Log No. C07-01-0044 fails because he has failed to exhaust his administrative remedies. *In re Muszalski* (1975) 52 Cal.App.3d 500, 508. Petitioner failed to submit an inmate appeal to the second level regarding the guilty finding on February 22, 2007. (RVR Log No. C07-01-0044.)

1 Petitioner's claim with respect to RVR Log No. C06-12-0043 also fails. A prison
2 administrator's decision to revoke behavior credits and inmate privileges must be based on some
3 evidence. *Superintendent v Hill* (1985) 472 U.S. 445, 455.

4 There is some evidence that supports the Senior Hearing Officer's guilty finding on
5 January 11, 2007 of recurring failure to meet program expectations. The evidence used to render
6 the finding included the Rules Violation Report authored by Correctional Officer B. Chavez,
7 which stated in part, "On 12/22/06, at approximately 1030 hours, you inmate Fosselman, (P-
8 13462, C8-127), failed to participate in the facility interviews. Interviews are designed to gather
9 information and assist the administration with returning the facility to normal program...On
10 12/26/06, you were instructed to interview and again failed to comply..." Inmates are required
11 to obey orders, to submit to cell and body searches, and to be questioned relative to their safety
12 and involvement, or face possible disciplinary action. Moreover, Petitioner did not request any
13 evidence or witnesses to be produced on his behalf at the hearing.

14 The petition is denied.

15 IT IS SO ORDERED.

16 Dated: 10-26-07



17
18 _____
Hon. Stephen A. Sillman
Judge of the Superior Court
19
20
21
22
23
24
25

CERTIFICATE OF MAILING

C.C.P. SEC. 1013a

I do hereby certify that I am not a party to the within stated cause and that on

OCT 29 2007

I deposited true and correct copies of the following document:

ORDER in sealed envelopes with postage thereon fully prepaid, in the mail at Salinas,
California, directed to each of the following named persons at their respective addresses
as hereinafter set forth:

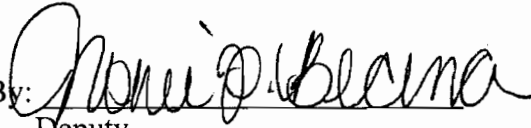
Lorenzo Fosselman, Jr. P-13462
Salinas Valley State Prison
P.O. Box 1050
Soledad, CA 93960

Dated: **OCT 29 2007**

Connie Mazzei,
Clerk of the Court

By:

Deputy


NOEMI P. BECERRA

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
INMATE APPEALS BRANCH
P. O. BOX 942883
SACRAMENTO, CA 94283-0001

DIRECTOR'S LEVEL APPEAL DECISION

Date: **AUG 08 2007**

In re: Fosselman, P-13462
Salinas Valley State Prison
P.O. Box 1020
Soledad, CA 93960-1020

IAB Case No.: 0615346

Local Log No.: SVSP 07-01304

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner R. Floto. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: The appellant is submitting this appeal relative to CDC Form 115, Rules Violation Report (RVR), Log #C07-01-0044, dated January 19, 2007, for "Recurring Failure to Meet Program Expectations," a Division "F" offense. He contends that the charge constitutes stacking as he was issued an RVR for the same infraction two weeks prior. He requests dismissal of the RVR.

II SECOND LEVEL'S ARGUMENT: The reviewer found that time constraints were not met in the adjudication of the RVR; therefore, no forfeiture of credit was assessed as a penalty portion of in the RVR. The appellant was afforded due process, including a fair and unbiased hearing. On January 19, 2007, the appellant refused to comply as ordered to participate in the interview process as required in the "un-lock" protocol. The appellant as with all inmates must participate in the interview process. He may during the interview may choose to participate in the process and help to solve the crisis or may elect to not provide information. The appellant was found guilty based upon a preponderance of evidence by an impartial Senior Hearing Officer (SHO). The appellant is a participant in the Mental Health Services Delivery System at the Correctional Clinical Case Management System (CCCMS), and it was determined that his actions were not related to his condition and should not be considered in the penalty. The appellant did not meet the criteria for the assignment of an Investigative Employee to assist in the gathering of evidence. The appellant did not meet the criteria for the assignment of a Staff Assistant as there was no need for a confidential relationship; the issues are not complex; and the appellant is not illiterate and understands English. Stacking is defined as charging an inmate with multiple violations, which warrants a single report. If there is no nexus between the violations then separate disciplinary actions may be initiated even though the discovery may have been simultaneous. Additionally, separate disciplinary actions may be initiated for similar acts if they occur at different times.

III DIRECTOR'S LEVEL DECISION: Appeal is denied.

A. FINDINGS: The appellant was afforded process in the adjudication of the RVR, but not all procedural guidelines were met. Therefore, no forfeiture of credit was assessed in the penalty assessment of the RVR. A preponderance of evidence was established by an impartial SHO to sustain the guilty finding. Reports reflect that the appellant has presented no new or compelling evidence in the appeal, which would warrant a modification of the decision reached by the institution.

B. BASIS FOR THE DECISION:

California Code of Regulations, Title 15, Section: 3005, 3315, 3320, 3323

C. ORDER: No changes or modifications are required by the institution.

FOSSELMAN, P-13462
CASE NO. 0615346
PAGE 2

This decision exhausts the administrative remedy available to the appellant within CDCR.

A handwritten signature in black ink, appearing to read "Grannis", with a small "4" written below the end of the signature.

N. GRANNIS, Chief
Inmate Appeals Branch

cc: Warden, SVSP
Appeals Coordinator, SVSP

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
INMATE APPEALS BRANCH
P. O. BOX 942883
SACRAMENTO, CA 94283-0001
DIRECTOR'S LEVEL APPEAL DECISION

Date:

In re: Fosselman, P-13462
Salinas Valley State Prison
P.O. Box 1020
Soledad, CA 93960-1020

IAB Case No.: 0613580

Local Log No.: SVSP 07-01064

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner R. Floto. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: The appellant is submitting this appeal relative to CDC Form 115, Rules Violation Report (RVR), Log #C06-12-0043, dated December 26, 2006, for "Recurring Failure to Meet Program Expectations," a Division "F" offense. It is the appellant's position that he is not guilty of the RVR as charged. He alleges that the evidence does not support the charge. The appellant requests dismissal of the RVR.

II SECOND LEVEL'S ARGUMENT: The reviewer found that the appellant was afforded all of his due process rights, including a fair and unbiased hearing. On December 26, 2006, the appellant refused to report to participate in the mandatory interview process at the institution after an incident. He was provided another opportunity and refused to comply. The appellant was found guilty based upon a preponderance of evidence by an impartial Senior Hearing Officer (SHO). The appellant is a participant in the Mental Health Services Delivery System at the Correctional Clinical Case Management System (CCCMS), and it was determined that his actions were not related to his condition and should not be considered in the penalty. The appellant did not meet the criteria for the assignment of an Investigative Employee to assist in the gathering of evidence. The appellant did not meet the criteria for the assignment of a Staff Assistant as there was no need for a confidential relationship; the issues are not complex; and the appellant is not illiterate and understands English. The appellant waived that witnesses be present at the hearing.

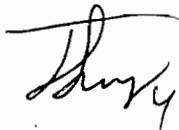
III DIRECTOR'S LEVEL DECISION: Appeal is denied.

A. FINDINGS: The appellant was afforded all due process rights in the adjudication of the RVR and all procedural guidelines were met. A preponderance of evidence was established by an impartial SHO to sustain the guilty finding. Reports reflect that the appellant has presented no new or compelling evidence in the appeal, which would warrant a modification of the decision reached by the institution.

B. BASIS FOR THE DECISION:
California Code of Regulations, Title 15, Section: 3005, 3315, 3320, 3323

C. ORDER: No changes or modifications are required by the institution.

This decision exhausts the administrative remedy available to the appellant within CDCR.



N. GRANNIS, Chief
Inmate Appeals Branch

cc: Warden, SVSP
Appeals Coordinator, SVSP

RULES VIOLATION REPORT

LOG# C-06-12-0043

Exhibit

A

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT

| | | | | | |
|--|----------------------------|---|------------------------------|-----------------------|-----------------------|
| CDC NUMBER P-13462 | INMATE'S NAME FOSSELMAN | RELEASE/BOARD DATE 10/17/07 | INST. S.V.S.P. | HOUSING NO. CB-127 | LOG NO. C06-12-004 |
| VIOLATED RULE NO(S) C.C.P. §3005(b) | | SPECIFIC ACTS Recurring Failure to Meet Program Expectations | LOCATION Fac "C" Build. 8 | DATE 12/26/06 | TIME 1030 |

CIRCUMSTANCES On 12/22/06, at approximately 1030 hours, you Inmate FOSSELMAN, (P-13462, CS-127), failed to participate in the facility interviews. Interviews are designed to gather information and assist the administration with returning the facility to a normal program. By failing to interview the administration is unable to determine the threat you pose to other inmates or staff and or having any information relative to the incident (criminal gang activity which occurred) that requires the interview process per D.O.M. 35015 Unlock Protocol. Based on this, it appears that you are promoting the activity or organized criminal/gang/disruptive group activity, which occurred that required an investigation/interview process to be implemented. As a general population inmate, you are expected to comply with departmental policy, rules and regulations as well as institutional procedures. State and Federal Laws. By failing to participate in the interview process, you are willfully indicating that you may have information and could actively be participating and promoting in organized criminal gang/disruptive group activity. You were non-receptive to counseling. On 12/26/06, you were instructed to interview and again failed to comply. Based on the nature of the incident your refusal to participate in the review process, you are promoting organized criminal gang/disruptive group activity. You are instructed to comply with the interview process. Failure to do so will continue to result in progressive discipline. Inmate FOSSELMAN [is] [is not] a participant in the Mental Health Services Delivery System.

| | | | |
|---|------------------------|--|--|
| REPORTING EMPLOYEE (Typed Name and Signature) B. Chavez, Correctional Officer | DATE 01/04/07 | ASSIGNMENT CB Floor Officer | RDO'S T/F |
| REVIEWING SUPERVISOR'S SIGNATURE | DATE 1/4/07 | <input type="checkbox"/> INMATE SEGREGATED PENDING HEARING | |
| CLASSIFIED <input type="checkbox"/> ADMINISTRATIVE <input checked="" type="checkbox"/> SERIOUS | OFFENSE DIVISION: F | DATE 1/4/07 | CLASSIFIED BY (Typed Name and Signature) |
| HEARING REFERRED TO <input type="checkbox"/> HO <input type="checkbox"/> SHO <input type="checkbox"/> SC <input type="checkbox"/> FC | | | LOC. |

COPIES GIVEN INMATE BEFORE HEARING

| | | | | |
|--|-----------------------------|----------------|--------------|-----------------------------|
| <input checked="" type="checkbox"/> CDC 115 | BY: (STAFF'S SIGNATURE) | DATE 1/4/07 | TIME 0715 | TITLE OF SUPPLEMENT |
| <input type="checkbox"/> INCIDENT REPORT LOG NUMBER: | BY: (STAFF'S SIGNATURE) | DATE | TIME | BY: (STAFF'S SIGNATURE) |
| | | DATE | TIME | |

HEARING

Notes: The charges were read aloud as written to Inmate Fosselman who acknowledged understanding the charges and entered a plea of Not Guilty.

Findings: Inmate Fosselman was found Guilty of violating CCP § 3005(b); "Recurring Failure to Meet Program Expectations." Inmate Assessed 30 days forfeiture of behavioral credits, consistent with a Division 'F' offense (CCP § 3323(h)(3)); Assessed 90 days loss of privileges: No yard access, no quarterly packages, no special purchase, no telephone use and no canteen draw (to begin 01-11-07 and end 04-11-07); Inmate was counseled and reprimanded.

Classification: Referred to UCC for program review.

REFERRED TO ☐ CLASSIFICATION ☐ BPT/NAEA

| | | | |
|---|-----------------------------|--|-----------------|
| ACTION BY: (TYPED NAME) J. Celaya, Lieutenant | SIGNATURE | DATE 1/4/07 | TIME |
| REVIEWED BY: (SIGNATURE) G. Ponder, Captain | DATE 1/4/07 | CHIEF DISCIPLINARY OFFICER'S SIGNATURE M. Moore | DATE 1/30/07 |
| <input type="checkbox"/> COPY OF CDC 115 GIVEN INMATE AFTER HEARING | BY: (STAFF'S SIGNATURE) | DATE 1/4/07 | TIME 10 |

CDC 115 (7/88)

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

SERIOUS RULE VIOLATION REPORT

| | | | | | |
|-----------------------|----------------------------|--|------------------|-------------------------|-----------------------|
| CDC NUMBER P-13462 | INMATE'S NAME ROSSELMAN | VIOLATED RULE NO(S) C.C.R. §3005(b) | DATE 12/26/06 | INSTITUTION S.V.S.P. | LOG NO. 06-17-0413 |
|-----------------------|----------------------------|--|------------------|-------------------------|-----------------------|

REFERRAL FOR FELONY PROSECUTION IS LIKELY IN THIS INCIDENT ☐ YES ☒ NO

POSTPONEMENT OF DISCIPLINARY HEARING

| | | |
|--|---------------------------|------|
| <input type="checkbox"/> I DO NOT REQUEST my hearing be postponed pending outcome of referral for prosecution. | INMATE'S SIGNATURE N/A | DATE |
| <input type="checkbox"/> I REQUEST my hearing be postponed pending outcome of referral for prosecution. | INMATE'S SIGNATURE N/A | DATE |
| DATE NOTICE OF OUTCOME RECEIVED | DISPOSITION N/A | |
| <input type="checkbox"/> I REVOKE my request for postponement. | INMATE'S SIGNATURE N/A | DATE |

STAFF ASSISTANT

| | | |
|--|--|---------------|
| STAFF ASSISTANT | INMATE'S SIGNATURE | DATE |
| <input type="checkbox"/> REQUESTED <input type="checkbox"/> WAIVED BY INMATE | | |
| <input type="checkbox"/> ASSIGNED | DATE | NAME OF STAFF |
| <input checked="" type="checkbox"/> NOT ASSIGNED | REASON DUPED BY THE INMATE 12/25 11:50 AM | |

INVESTIGATIVE EMPLOYEE

| | | |
|--|--|---------------|
| INVESTIGATIVE EMPLOYEE | INMATE'S SIGNATURE | DATE |
| <input type="checkbox"/> REQUESTED <input type="checkbox"/> WAIVED BY INMATE | | |
| <input type="checkbox"/> ASSIGNED | DATE | NAME OF STAFF |
| <input checked="" type="checkbox"/> NOT ASSIGNED | REASON DUPED BY THE INMATE 12/25 11:50 AM | |

EVIDENCE / INFORMATION REQUESTED BY INMATE:

WITNESSES

| | | | | | |
|--|--|---|--------------------------------|---|--|
| WITNESSES REQUESTED AT HEARING (IF NOT PRESENT, EXPLAIN IN FINDINGS) | | | | | |
| <input type="checkbox"/> REPORTING EMPLOYEE | <input type="checkbox"/> STAFF ASSISTANT | <input type="checkbox"/> INVESTIGATIVE EMPLOYEE | <input type="checkbox"/> OTHER | <input checked="" type="checkbox"/> NONE | |
| WITNESSES (GIVE NAME AND TITLE OR CDC NUMBER) | | GRANTED | NOT GRANTED | WITNESSES (GIVE NAME AND TITLE OR CDC NUMBER) | |
| | | <input type="checkbox"/> | <input type="checkbox"/> | | |
| | | <input type="checkbox"/> | <input type="checkbox"/> | | |

INVESTIGATIVE REPORT: Investigative Employees must interview the inmate charged, the reporting employee, and any others who have significant information, documenting the testimony of each person interviewed. Review of files, procedures, and other documents may also be necessary.

| | | |
|--|--------------|----------------|
| INVESTIGATOR'S SIGNATURE | | DATE |
| BY: (STAFF'S SIGNATURE) | | DATE |
| <input checked="" type="checkbox"/> COPY OF CDC 115-A GIVEN INMATE | TIME 0715 | DATE 1/3/07 |

602 GRIEVANCE Forwarded To
WARDEN on 12.28.06

Exhibit

B.

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

INMATE/PAROLEE
APPEAL FORM
CDC 602 (12/87)

Location: Institution/Parole Region

Log No.

Category

1. SUSP C
2. _____1. 07-00362
2. _____11 3321
CAZ

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME: FOSSELMAN, Lorenzo NUMBER: 1013462 ASSIGNMENT: N/A UNIT/ROOM NUMBER: C-8 127

A. Describe Problem: On 12-28-06 my building C-8 was scheduled for afternoon yard leaving yard release % pretty instructed C.D. Hernandez not to release me. I have not received an RVR disposition restricting any loss of program (I have not violated no rules. as per the title 15) to justify restricting my program arbitrarily.

I haven't had no hearing, "received no lock up order"
If you need more space, attach one additional sheet.

B. Action Requested: To be afforded my privileges that I have continuing, to cease being singled out and harassed or to be afforded due process, if my privileges are going to be restricted.

Inmate/Parolee Signature: Fosseلمان Date Submitted: 12-28-06

INFORMAL LEVEL (Date Received: 01/13/07) 2203 Complete
Staff Response: DENIED. YOU FAILED TO SUCCESSFULLY THE INTERVIEW PROCESS ON 12/27/06, 12/26/06 & 01/05/07. YOU RECEIVED A 128B EXPLAINING EVERYTHING.

Staff Signature: Sgt. M. HATFIELD Date Returned to Inmate: 01/13/07

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification Strong, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

I'm dissatisfied because the general population is on Normal program and has been, yet I'm continually being denied access to any type of fresh air or exercise period which is beginning to place both my physical and mental health in jeopardy.

Signature: Fosseلمان Date Submitted: 1-23-07

Note: Property/Funds appeals must be accompanied by a completed

CDC Appeal Number:

Board of Control form BC-1E, Inmate Claim

REC'D JAN 24 2007

Disposition of RVR

Log # C06-12.0043

Exhibit

C

STATE OF CALIFORNIA
RULES VIOLATION REPORT - PART C

DEPARTMENT OF CORRECTIONS

PAGE 1 OF 2

| CDC NUMBER | INMATE'S NAME | LOG NUMBER | INSTITUTION | TODAY'S DATE |
|------------|---------------|-------------|-------------|--------------|
| P-13462 | Fosselman | C06-12-0043 | SVSP | 01-11-06 |

☐ SUPPLEMENTAL ☐ CONTINUATION OF ☐ CDC 115 CIRCUMSTANCES ☒ HEARING ☐ I.E. REPORT ☐ OTHER

Hearing: Hearing commenced on 1-11-07 at 1000 hours.

Inmate's Health: Inmate Fosselman stated his health was good and that he was ready to proceed with the hearing. I introduced myself as the SHO and explained the hearing procedures.

MHSDS: Inmate Fosselman is not a participant in the Mental Health Services Delivery System.

Date of discovery: 12-26-06

Initial RVR copy issued on: 1-05-07

Hearing Completed on: 1-11-07

Last document issued to inmate on: 1-05-07

D.A. Postponed date: N/A

Date D.A. results issued: N/A

Time Constraints: All time constraints have been met pursuant to CCR§ 3320. Inmate Fosselman acknowledged receiving all documents used for this hearing 24 hours prior to the hearing.

Staff Assistant (SA): Inmate Fosselman (GPL 12.9) does not meet the criteria for the assignment of a staff assistant per CCR§3315.

Investigative Employee (IE): Inmate Fosselman does not meet the criteria for the assignment of an Investigative Employee.

D.A. Referral: This matter was not referred to the Monterey County Attorney's Office.

Evidence Requested or Used: Inmate Fosselman did not request that evidence be produced for this hearing at the time he was issued a copy of the CDC-115A.

Video Tape Evidence: No video tape evidence was utilized in the adjudication or fact finding process of this CDC-115 Rules Violation Report.

Inmate Plea and Statement: Inmate Fosselman entered a plea of "Not Guilty" stating, "I don't know nothing. I know my program expectation."

Witnesses Requested or Provided: Inmate Fosselman did not request that any staff or inmate witnesses be produced for this hearing.

Witness Testimony at Hearing: No witnesses were requested or granted by the SHO.

Confidential Information: Confidential information was not used in the adjudication of this 115.

Findings: Inmate Fosselman is found **guilty** of the charged offense of violating CCR§ 3005(b); for the specific act of, "Recurring failure to meet program expectation," a Division 'F' offense (CCR§ 3323(f)(3)). The evidence used to render this finding included:

- 1.) Rules Violation Report authored by Correctional Officer B. Chavez, which states in part, "Rules Violation Report authored by Correctional Officer B. Chavez, which states in part, "On 12/22/06, at approximately 1030 hours...you Inmate Fosselman, (V-33939, C8-127), failed to participate in the facility interviews. Interviews are designed to gather information and assist the administration with returning the facility to normal program...On 12/26/06, you were instructed to interview and again failed to comply..."

| | | | | | |
|-----------------------------------|--|----------------------------------|--|-------------------------------|--|
| SIGNATURE OF WRITER J. Celaya | | TITLE Correctional Lieutenant | | DATE NOTICE SIGNED 1/24/07 | |
| COPY OF CDC-115-C GIVEN TO INMATE | | GIVEN BY: (STAFF'S SIGNATURE) | | DATE SIGNED: 02/06/07 | |
| | | | | TIME SIGNED: 1800 | |

STATE OF CALIFORNIA
RULES VIOLATION REPORT - PART C

DEPARTMENT OF CORRECTIONS

PAGE 2 OF 2

| | | | | |
|-----------------------|----------------------------|---------------------------|---------------------|--------------------------|
| CDC NUMBER P-13462 | INMATE'S NAME Fosselman | LOG NUMBER C06-12-0043 | INSTITUTION SVSP | TODAY'S DATE 01-11-06 |
|-----------------------|----------------------------|---------------------------|---------------------|--------------------------|

☐ SUPPLEMENTAL ☐ CONTINUATION OF ☐ CDC-115 CIRCUMSTANCES ☒ HEARING ☐ I.E. REPORT ☐ OTHER

Base on the aforementioned facts, this SHO finds the preponderance of the evidence has been met to render and sustain a finding of guilt on the charged offense of violating CCR§ 3005(b), specifically, "Recurring Failure to Meet Program Expectations," a Division 'F' offense (CCR§3323(h)(3)).

Additional Disposition: None.

Enemy Concerns: There are no enemy concerns related to this disciplinary hearing.

Appeal Rights: Inmate Fosselman was advised that the disposition of this Rules Violation Report would not become final until approved by the Chief Disciplinary Officer, at which time he will receive a final copy of the completed CDC-115. He was also advised of his rights to appeal the findings of this hearing, the methods of appealing, and credit restoration rights pursuant to CCR§ 3327 & 3328, governing the restoration of forfeited credits.

| | | | | | |
|-----------------------------------|--|--|--|-------------------------------|--|
| SIGNATURE OF WRITER J. Celaya | | TITLE Correctional Lieutenant | | DATE NOTICE SIGNED 1/24/07 | |
| COPY OF CDC-115-C GIVEN TO INMATE | | GIVEN BY: (STAFF'S SIGNATURE) [Signature] | | DATE SIGNED: 02/06/07 | |
| | | | | TIME SIGNED: 1300 | |

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

NOTICE OF CLASSIFICATION HEARING

CDC 128 - B1 (Rev 2/95)

| INMATE NAME | CDC NUMBER | TODAY'S DATE |
|-------------|------------|--------------|
| Fosse, Ian | P-13462 | 1-11-07 |

YOU WILL APPEAR BEFORE A CLASSIFICATION COMMITTEE ON _____ FOR CONSIDERATION OF A MAJOR PROGRAM CHANGE AS FOLLOWS:

- ☐ TRANSFER ☐ INCREASE IN CUSTODY ☐ ASSIGNMENT TO SECURITY HOUSING
☐ REMOVAL FROM PROGRAM ☒ OTHER Program Review

REASON:

On 1-11-07, you were found guilty of Rules Violation Report Log #C06-12-0043 for the specific act of "Recurring Failure to Meet Program Expectations."

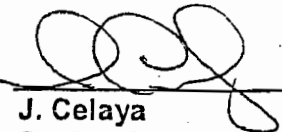
STAFF NAME

ROUTING INSTRUCTIONS: ORIGINAL - CLASSIFICATION COMMITTEE COPY - INMATE

NAME: Fosselman **CDC#** P-13462 **HOUSING:** C8-127 **CDC** 128-B

Inmate Fosselman's P-13462, privileges are suspended pursuant to the disposition of CDC-115 RVR, Log Number C06-12-0043, and in accordance with CCR§ 3314(f)(5)(I). As a result of this action, Inmate Fosselman is subject to the conditions described in CCR§ 3314(e)(2) and his privileges and non-privileges are as follows: **A)** No telephone calls, except on an emergency basis, **B)** No special purchases, **C)** No quarterly packages, **D)** No yard or RDO yard access, **E)** ¼ Canteen Draw; Loss of privileges is for **90 Days**, from 01-12-07 until 04-12-07.

Original: Central Records
Cc: Facility 'C' Captain
Property Room Officer
Canteen Manager Officer
Housing Unit
Writer
Inmate



J. Celaya
Senior Hearing Officer
Facility 'C' Lieutenant
Salinas Valley State Prison

DATE: 01-11-07

(Notice of 90 Days Loss of Privileges)

RULES VIOLATION REPORT

LOG # C-06-12-0043

Exhibit

D

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT

| | | | | | |
|---|----------------------------|---|---------------------|-----------------------|------------------------|
| CDC NUMBER P-13462 | INMATE'S NAME FOSSELMAN | RELEASE/BOARD DATE 10/17/69 | INST. S.V.S.P. | HOUSING NO. C8-130 | LOG NO. C07-01-0044 |
| VIOLATED RULE NO(S): C.C.R. §3005(b) | | SPECIFIC ACTS Recurring Failure to Meet Program Expectations | LOCATION Fac "C" | DATE 01/10/07 | TIME 1000 Hrs |

CIRCUMSTANCES On 01/19/07, you Inmate FOSSELMAN, (P-13462, C8-223), failed to participate in the facility interview. Interviews are designed to gather information and assist the administration with returning the facility to a normal program. By failing to interview the administration is unable to determine the threat you pose to other inmates and or staff and or your having information relative to the incident (criminal/gang activity which occurred) that requires the interview process per D.O.M. 55015 Un-Lock Protocol. Based on this it appear that you are promoting the activity of organized criminal/gang/disruptive group activity, which occurred that required an investigation/interview process to be implemented. As a general population inmate you are expected to comply with departmental policy, rules and regulations as well as institutional procedures, state and federal laws. By failing to participate in the interview process, you are willfully indicating that you may have information and could actively be participating and promoting in organized criminal gang/disruptive group activity. You were non-receptive to counseling. On 01/19/07, you were instructed to interview and again failed to comply. Based on the nature of the incident and your refusal to participate in the review process, you are promoting organized criminal gang/disruptive group activity. You are instructed to comply with the interview process. Failure to do so will continue to result in progressive discipline. Inmate FOSSELMAN [is] a participant in the Mental Health Services Delivery System at the CCMHS level of care and is aware of this report.

| | | | | |
|--|-----------------------------|----------------|--|--|
| REPORTING EMPLOYEE (Typed Name and Signature) J. Mensing, Correctional Sergeant | | DATE 2-7-07 | ASSIGNMENT "C" Program Sergeant | RDO'S T/W |
| REVIEWING SUPERVISOR'S SIGNATURE | | DATE 2/7/07 | <input type="checkbox"/> INMATE SEGREGATED PENDING HEARING | |
| CLASSIFIED <input type="checkbox"/> ADMINISTRATIVE <input checked="" type="checkbox"/> SERIOUS | OFFENSE DIVISION: F | DATE 2/7/07 | CLASSIFIED BY (Typed Name and Signature) R. Boccella | HEARING REFERRED TO <input type="checkbox"/> HO <input checked="" type="checkbox"/> SHO <input type="checkbox"/> SC <input type="checkbox"/> FC |
| COPIES GIVEN INMATE BEFORE HEARING | | | | |
| <input checked="" type="checkbox"/> CDC 115 | BY: (STAFF'S SIGNATURE) | DATE 2/7/07 | TIME 0815 | TITLE OF SUPPLEMENT |
| <input type="checkbox"/> INCIDENT REPORT LOG NUMBER: | BY: (STAFF'S SIGNATURE) | DATE | TIME | BY: (STAFF'S SIGNATURE) |

HEARING

Mea: The charges were read aloud as written to Inmate Fosselman, who acknowledged understanding the charges and entered a plea of Not Guilty.

Findings: Inmate Fosselman was found Guilty of violating CCRS 3005(b); specifically, "Recurring Failure to Meet Program Expectations," a Division "F" offense (CCRS 3323(h)(3)).

Disposition: Assessed 0 days forfeiture of behavioral credits, due to time constraint not being met. Assessed 60 days loss of privileges: 1 canteen draw, no quarterly packages, no special purchase and no telephone use (to begin 02-22-07 and end 05-22-07); Inmate was counseled, warned and reprimanded.

Classification: Referred to UCC for program review.

Disposition continued on CDC 115-C

REFERRED TO ☐ CLASSIFICATION ☐ BPT/NAEA

| | | | |
|---|-----------------------------|--|----------------|
| ACTION BY: (TYPED NAME) E. Moore, Lieutenant | SIGNATURE | DATE 3/6/07 | TIME 1715 |
| REVIEWED BY: (SIGNATURE) G. Fender, Captain | DATE 3/7/07 | CHIEF DISCIPLINARY OFFICER'S SIGNATURE | DATE 3-9-07 |
| <input type="checkbox"/> COPY OF CDC 115 GIVEN INMATE AFTER HEARING | BY: (STAFF'S SIGNATURE) | DATE 3-13-07 | TIME 1500 |

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

SERIOUS RULES VIOLATION REPORT

| | | | | | |
|-----------------------|----------------------------|--|------------------|-------------------------|------------------------|
| CDC NUMBER P-13462 | INMATE'S NAME FOSSelman | VIOLATED RULE NO(S) C.C.R. §3005(b) | DATE 01/19/07 | INSTITUTION S.V.S.P. | LOG NO. 007-01-0044 |
|-----------------------|----------------------------|--|------------------|-------------------------|------------------------|

REFERRAL FOR FELONY PROSECUTION IS LIKELY IN THIS INCIDENT ☐ YES ☒ NO

POSTPONEMENT OF DISCIPLINARY HEARING

| | | |
|--|---------------------------|------|
| <input type="checkbox"/> I DO NOT REQUEST my hearing be postponed pending outcome of referral for prosecution. | INMATE'S SIGNATURE N/A | DATE |
| <input type="checkbox"/> I REQUEST my hearing be postponed pending outcome of referral for prosecution. | INMATE'S SIGNATURE N/A | DATE |

DATE NOTICE OF OUTCOME RECEIVED

DISPOSITION

N/A

| | | |
|--|---------------------------|------|
| <input type="checkbox"/> I REVOKE my request for postponement. | INMATE'S SIGNATURE N/A | DATE |
|--|---------------------------|------|

STAFF ASSISTANT

| | | |
|--|--------------------------------------|---------------|
| STAFF ASSISTANT | INMATE'S SIGNATURE | DATE |
| <input type="checkbox"/> REQUESTED <input type="checkbox"/> WAIVED BY INMATE | | |
| <input type="checkbox"/> ASSIGNED | DATE | NAME OF STAFF |
| <input checked="" type="checkbox"/> NOT ASSIGNED | REASON DNMC per TITLE 15 CCR 3315 | |

INVESTIGATIVE EMPLOYEE

| | | |
|--|--------------------------------------|---------------|
| INVESTIGATIVE EMPLOYEE | INMATE'S SIGNATURE | DATE |
| <input type="checkbox"/> REQUESTED <input type="checkbox"/> WAIVED BY INMATE | | |
| <input type="checkbox"/> ASSIGNED | DATE | NAME OF STAFF |
| <input checked="" type="checkbox"/> NOT ASSIGNED | REASON DNMC per TITLE 15 CCR 3315 | |

EVIDENCE / INFORMATION REQUESTED BY INMATE:

WITNESSES

WITNESSES REQUESTED AT HEARING (IF NOT PRESENT, EXPLAIN IN FINDINGS)

☒ REPORTING EMPLOYEE ☐ STAFF ASSISTANT ☐ INVESTIGATIVE EMPLOYEE ☐ OTHER ☐ NONE

WITNESSES (GIVE NAME AND TITLE OR CDC NUMBER)

GRANTED

NOT GRANTED

WITNESSES (GIVE NAME AND TITLE OR CDC NUMBER)

GRANTED

NOT GRANTED

INVESTIGATIVE REPORT: Investigative Employees must interview the inmate charged, the reporting employee, and any others who have significant information, documenting the testimony of each person interviewed. Review of files, procedures, and other documents may also be necessary.

| | | | |
|--|-------------------------|--------------------------|-----------------|
| <input checked="" type="checkbox"/> COPY OF CDC 115-A GIVEN INMATE | BY: (STAFF'S SIGNATURE) | INVESTIGATOR'S SIGNATURE | DATE |
| | | | |
| | | TIME 10:30 | DATE 1-27-07 |

Disposition of RVR
Log # C07-01-0044

Exhibit

E

STATE OF CALIFORNIA
RULES VIOLATION REPORT - PART C

DEPARTMENT OF CORRECTIONS

PAGE 1 OF 3

| | | | | |
|-----------------------|----------------------------|---------------------------|---------------------|--------------------------|
| CDC NUMBER P-13462 | INMATE'S NAME Fosselman | LOG NUMBER C07-01-0044 | INSTITUTION SVSP | TODAY'S DATE 02-23-07 |
|-----------------------|----------------------------|---------------------------|---------------------|--------------------------|

☐ SUPPLEMENTAL ☐ CONTINUATION OF ☐ CDC 115 CIRCUMSTANCES ☒ HEARING ☐ I.E. REPORT ☐ OTHER

Hearing: The hearing convened on 02-22-07 at approximately 2000 hours when I introduced myself to Inmate Fosselman as the Senior Hearing Officer for this disciplinary and explained the hearing procedures. Fosselman stated he was in good health with normal hearing and vision. Fosselman stated that he understood the disciplinary charge of "Recurring Failure to Meet Program Expectations" and that he was prepared to begin the hearing.

MHSDS: Fosselman is a participant in the Mental Health Services Delivery System (MHSDS) at the Correctional Clinical Case Management System (CCCMS) level of care. The circumstances of the Rule Violation Report do not indicate that Fosselman exhibited any bizarre behavior that would raise concerns about his mental health. Based on this and pursuant to recent changes approved by the U.S. District Court in Coleman, a mental health assessment was not initiated. Consequently, a staff assistant was not deemed necessary.

Date of discovery: 01-19-07

Initial RVR copy issued on: 02-07-07

Hearing completed on: 02-22-07

Last document issued to inmate on: 02-07-07

D.A. Postponed date: N/A

Date D.A. results issued: N/A

Due Process: The disciplinary was not served on Fosselman within 15 days of discovery and the hearing has been held within 30 days of service. Fosselman received his copies of all documents more than 24 hours in advance of the hearing. Time constraints have not been met.

Staff Assistant (SA): Fosselman (GPL 12.9) does not meet the criteria for the assignment of a staff assistant per CCR§ 3315. Per the CDC 115-A, Fosselman has not requested SA assignment.

Investigative Employee (IE): An IE was not assigned as the issues are not complex and the available information is sufficient. Per the CDC 115-A, Fosselman has not requested IE assignment.

D.A. Referral: This matter was not referred to the Monterey County District Attorney's Office.

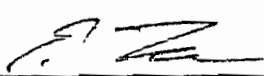
Evidence Requested or Used: Fosselman did not request that evidence be produced for this hearing at the time he was issued a copy of the CDC-115A.

Video and Photo Evidence: No videotape or photo evidence was utilized in the adjudication or fact finding process of this CDC-115 Rules Violation Report.

Inmate Plea and Statement: Fosselman entered a plea of "Not Guilty" for the specific charge of "Recurring Failure to Meet Program Expectations."

In the hearing, Fosselman offered written testimony as evidence supporting his defense. Fosselman was informed that, once these documents were accepted as evidence, these would not be returned to him as they are part of the hearing documents and it is his responsibility to make any copies that he may require of his evidence. Fosselman stated that he understood. The evidence was accepted and marked Evidence in red letters across the top of the first and only page. This is my summary of this evidence: Fosselman claims that he is not guilty based on the following information; Fosselman says that Sergeant J. Mensing came to his cell and asked him participate in an interview. Fosselman claims that Mensing offered to reward him with his quarterly package in exchange for his participation. Fosselman admits that he refused to participate in the interview but insists that he didn't realize he was violating rules and regulations in doing so.

Request for Witnesses: Fosselman requested the presence of RE Sergeant J. Mensing as a witness. SHO granted the requested witness. No witnesses were requested by the SHO.

| | | | | | |
|---|--|----------------------------------|--|------------------------------|--------------|
| SIGNATURE OF WRITER E. Moore  | | TITLE Correctional Lieutenant | | DATE NOTICE SIGNED 3/6/07 | |
| COPY OF CDC-115-C GIVEN TO INMATE | | GIVEN BY: (STAFF'S SIGNATURE) | | DATE SIGNED: | TIME SIGNED: |

STATE OF CALIFORNIA
RULES VIOLATION REPORT - PART C

DEPARTMENT OF CORRECTIONS

PAGE 2 OF 3

| | | | | |
|-----------------------|----------------------------|---------------------------|---------------------|--------------------------|
| CDC NUMBER P-13462 | INMATE'S NAME Fosselman | LOG NUMBER C07-01-0044 | INSTITUTION SVSP | TODAY'S DATE 02-23-07 |
|-----------------------|----------------------------|---------------------------|---------------------|--------------------------|

☐ SUPPLEMENTAL ☐ CONTINUATION OF ☐ CDC 115 CIRCUMSTANCES ☒ HEARING ☐ I.E. REPORT ☐ OTHER

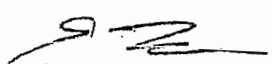
Witness Testimony at Hearing: Correctional Sergeant J. Mensing provided the following testimony in the hearing: Fosselman was ordered to participate in a threat assessment interview. Fosselman refused to obey this order. Fosselman was informed that he would be eligible to receive a quarterly package, in accordance with policy and procedures, if he met program expectations. Fosselman was also told that he must participate in the threat assessment interview in order to meet program expectations. Mensing indicated that he was only explaining the policy and procedures to Fosselman and denied using Fosselman's quarterly package as a reward.

Fosselman provided this additional testimony concerning the offense in the hearing. Fosselman admitted that he had refused to participate in this threat assessment interview and previous threat assessment interviews before stating, "I don't have anything to say and I don't know anything about what happened."

Confidential Information: Confidential Information was not used in the adjudication of this 115.

Findings: Fosselman is found guilty of the charged offense of violating CCR§ 3005(b) for the specific act of, "Recurring Failure to Meet Program Expectations," a Division 'F' offense (CCR§ 3323(h)(3)). The evidence used to render this finding included:

- 1.) Rules Violation Report authored by Correctional Sergeant J. Mensing, which states in part: "On 01/19/07, you Inmate Fosselman, (P-13462 C8-130), failed to participate in the facility interviews. Interviews are designed to gather information and assist the administration with returning the facility to a normal program. By failing to interview the administration is unable to determine the threat you pose to other inmates and or staff and or your having information relative to the incident (criminal/gang activity which occurred) that requires the interview process per D.O.M. 55015:Un-lock Protocol. Based on this it appears that you are promoting the activity of organized criminal/gang/disruptive group activity, which occurred that required an investigation/interview process to be implemented. As a general population inmate you are expected to comply with departmental policy, rules and regulations as well as institutional procedures, state and federal laws. By failing to participate in the interview process, you are willfully indicating that you may have information and could actively be participating and promoting in organized criminal gang/disruptive group activity. You were non-receptive to counseling. On 01/19/07, you were instructed to interview and again failed to comply. Based on the nature of the incident and your refusal to participate in the review process, you are promoting organized criminal gang/disruptive group activity."
- 2.) On 01-11-07 Fosselman was previously found guilty of "Recurring Failure to Meet Program Expectations" a Rules Violation Report which was also generated as a direct result of Fosselman's failure to participate in the threat assessment interview and facility review process as outlined in D.O.M. 55015:Un-lock Protocol.
- 3.) The admission by Fosselman during testimony in the hearing, and Fosselman's written defense statement, that Fosselman refused to participate in the threat assessment interview.
- 4.) Fosselman has failed to provide a reasonable explanation that would preclude Fosselman's expected participation in a threat assessment interview. Fosselman argues that Sergeant Mensing utilized a quarterly package to entice his participation in the threat assessment interview but fails to provide a reasonable explanation as to why this would prevent Fosselman from participating in the interview. The most reasonable explanation is that Fosselman does not believe that he should be required to participate in the threat assessment interview and as a result, is simply refusing to interview.

| | | | | | |
|---|--|----------------------------------|--|------------------------------|--|
| SIGNATURE OF WRITER E. Moore  | | TITLE Correctional Lieutenant | | DATE NOTICE SIGNED 3/6/07 | |
| COPY OF CDC-115-C GIVEN TO INMATE | | GIVEN BY: (STAFF'S SIGNATURE) | | DATE SIGNED: TIME SIGNED: | |

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT - PART C

PAGE 3 OF 3

| | | | | |
|-----------------------|----------------------------|---------------------------|---------------------|--------------------------|
| CDC NUMBER P-13462 | INMATE'S NAME Fosselman | LOG NUMBER C07-01-0044 | INSTITUTION SVSP | TODAY'S DATE 02-23-07 |
|-----------------------|----------------------------|---------------------------|---------------------|--------------------------|

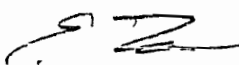
| | | | | | |
|---------------------------------------|---|--|---|-------------------------------------|--------------------------------|
| <input type="checkbox"/> SUPPLEMENTAL | <input type="checkbox"/> CONTINUATION OF: | <input type="checkbox"/> CDC-115 CIRCUMSTANCES | <input checked="" type="checkbox"/> HEARING | <input type="checkbox"/> I/E REPORT | <input type="checkbox"/> OTHER |
|---------------------------------------|---|--|---|-------------------------------------|--------------------------------|

Base on the aforementioned facts, this SHO finds the preponderance of the evidence has been met to render and sustain a finding of guilt on the charged offense of violating CCR§ 3005(b), specifically, "Recurring Failure to Meet Program Expectations," a Division 'F' offense (CCR§3323(h)(3)).

Additional Disposition: None.

Enemy Concerns: There are no enemy concerns related to this disciplinary hearing.

Appeal Rights: Fosselman was advised that the disposition of this Rules Violation Report would not become final until approved by the Chief Disciplinary Officer at which time he will receive a final copy of the completed CDC-115. Fosselman was also advised of his right to appeal the findings of this hearing, the methods of appealing, and credit restoration rights pursuant to CCR§ 3327 & 3328, governing the restoration of forfeited credits.

| | | | | | |
|---|--|----------------------------------|--|------------------------------|--------------|
| SIGNATURE OF WRITER E. Moore  | | TITLE Correctional Lieutenant | | DATE NOTICE SIGNED 3/6/07 | |
| COPY OF CDC-115-C GIVEN TO INMATE | | GIVEN BY: (STAFF'S SIGNATURE) | | DATE SIGNED: | TIME SIGNED: |

Not Guilty

WRITTEN STATEMENT TO IIS C07-01-0044

On 1-19-07 SGT J. Mensing, accompanied by C.O E. Hernandez did come to my cell looking for me, when I spoke to him he told me he had a package, that was mine, in the dining hall, and he would go get it for me if I came out and interviewed with him.

At that time I declined, true, but I was not aware that I was breaking any rule, I was never given a direct order, to interview, I interpreted the statement SGT MENSING made to mean, that he would be rewarding me, if I came into the office, and answered questions about incidents to which I know nothing about.

my cell mate ~~overheard~~ ^{overheard} the conversation, as well as a few other prisoners in near by cells also C.O Hernandez was standing right there.

For the record, if during these ~~proceedings~~ ^{proceedings}, any staff member would like to ask me any questions, your welcome to, "I AM NOT AWARE OF ANY PRISON RUMORS, I HAVE NOT BEEN A SUSPECT, WITNESS OR VICTIM, TO NOTHING, AND I WILL NOT FABRICATE ANYTHING FOR SPECIAL FAVORS.

To these charges I plead NOT GUILTY

Respectfully
FELDMAN, L P13462

2-15-07

California Department of Corrections and Rehabilitation

Salinas Valley State Prison

MEMORANDUM



Date: February 17, 2007

To: G. Ponder
Captain, Facility C
Salinas Valley State Prison

Subject: RVR LOG# C07-01-0044 PROGRAM EXPECTATIONS

On 2/6/07 I was assigned to hear this RVR involving Inmate Fosselman P13462. On 2/6/07 I reviewed the RVR and found serious typing error had been made which would adversely affect the pending hearing. I returned the RVR and had it amended. The RVR was corrected and reissued to Fosselman on 2/7/07 outside of the 15 day issuance time frame. As a direct result, time constraints were lost in this matter. On 2/22/07 at approximately 2000 hours the hearing was completed and forwarded for processing.

E. Moore
Lieutenant, Facility C
Salinas Valley State Prison

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

NOTICE OF CLASSIFICATION HEARING

CDC 128 - B1 (Rev 2/95)


| | | |
|--------------------------|-----------------------|-------------------------|
| INMATE NAME Fossleman | CDC NUMBER P-13462 | TODAY'S DATE 2-22-07 |
|--------------------------|-----------------------|-------------------------|

YOU WILL APPEAR BEFORE A CLASSIFICATION COMMITTEE ON _____ FOR CONSIDERATION OF A
MAJOR PROGRAM CHANGE AS FOLLOWS:

- ☐ TRANSFER ☐ INCREASE IN CUSTODY ☐ ASSIGNMENT TO SECURITY HOUSING
☐ REMOVAL FROM PROGRAM ☒ OTHER Program Review

REASON:

On 2-22-07, you were found guilty of Rules Violation Report Log #007-01-0044 for the
specific act of "Recurring Failure to Meet Program Expectations."

| | | |
|-------------------------|--|------------|
| STAFF: NAME E. Moore |  | Lieutenant |
|-------------------------|--|------------|

ROUTING INSTRUCTIONS: ORIGINAL - CLASSIFICATION COMMITTEE COPY - INMATE

~ PRISONER REQUEST ~

To

FR. FASELSON, L. P13462

C/B 130

I'm yet to receive appeal Log # C-07-01304
which was due on 5-1-07. upon information
I believe you personally completed it at the 2nd level
on or about 4-18-07.

This is my 2nd Request, I do need
this appeal returned for exhaustion purposes.

I'm respectfully requesting this
matter be checked into with SECRETARIAL
STAFF. If for some reason appeal was
destroyed, please provide me with a
TRUE copy. So I can proceed.

Respectfully

Faseelson, L. P13462

C/B 130

5-8-07

CC: Warden

WRITER'S file

Legal aid of Monterey County.

STAFF Response: _____

RECEIVED MAY 09 2007

(3) DIRECTOR LEVEL Appeal DECISIONS
from PETITIONER & 2 Other PRISONERS
SIMILARY CIRCUMSTANCED

CONFIRMING there's NO Rule OR
REGULATION that allows STAFF TO
discipline AN PRISONER for REFUSING TO
speak during AN interview, OR FOR NOT
signing a COMPATIBILITY/OR PROMISE TO
BEHAVE CHRONO.

Exhibit

F

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
INMATE APPEALS BRANCH
P. O. BOX 942883
SACRAMENTO, CA 94283-0001

DIRECTOR'S LEVEL APPEAL DECISION

Date: JUN 20 2007

In re: Fosselman, P-13462
Salinas Valley State Prison
P.O. Box 1020
Soledad, CA 93960-1020

IAB Case No.: 0612648

Local Log No.: SVSP 06-00362

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner K. J. Allen. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: It is the appellant's position that he is being unfairly discriminated against by custody staff on Facility "C" at Salinas Valley State Prison (SVSP). The appellant claims he is not receiving access to inmate privileges. The appellant claims that he has not violated any departmental rule that would restrict his programming opportunity. The appellant also states he has not received a lock-up order restricting him from inmate privileges. The appellant requests on appeal that his privileges be restored and that he stop being harassed and denied due process protections.

II SECOND LEVEL'S DECISION: The reviewer found that it is the responsibility of the institution's management to create and maintain as safe an environment for the staff and inmates as possible. The reviewer found that it is the responsibility of the institution's management to create and maintain as safe an environment for the staff and inmates as possible. The reviewer indicated that although it is unfortunate that violence within the institution exists, it is the responsibility of staff to ensure the security and the safety of all persons within the Department's charge. The reviewer notes that the SVSP administration has acted in a responsible fashion to attempt to return Facility "C" to normal program. However, the assessment of available information gathered and the continuing violent acts committed and/or attempted by the inmate population indicates that staff cannot safely return the entire inmate population to normal program at this time. The use of classification committees, file reviews, the Investigative Services Unit, the Institutional Gang Investigators, and searches are all critical components to change Facility "C" into a positive programming facility. Additionally, inmates are required to participate in the facility interviews. The reviewer notes that the appellant failed to participate in facility interviews on December 26 and 27, 2006, and January 5, 2007; for which, the appellant has received progressive discipline. All departmental policies on the prevention of disorders were appropriately followed by staff. The appellant was reminded that each inmate is being addressed as an individual to determine the individual's commitment to non-violence. Due to the appellant's refusal to cooperate in the interview process, the facility managerial staff are unable to ascertain the threat level of the appellant and the threat level other inmates may have on the appellant. Thus, the appellant remains on modified program for the safety of the appellant, staff, and other inmates. Based on the above, the appeal was partially granted at the Second Level of Review in that the appellant is being provided privileges in accordance with his housing needs. Also, the appellant will not be harassed by any staff member.

III DIRECTOR'S LEVEL DECISION: Appeal is denied.

A. FINDINGS: It is standard practice in the Department to place a facility on modified program after major disturbances. It is also appropriate for staff to question the inmate population to ascertain the current safety of staff and other inmates on the facility. Pursuant to departmental regulations, institutional security takes precedence over all other program operations. Individual wardens are required to establish operating procedures to ensure the safety and security of the institution, staff, and inmates.

FOSELMAN, P-13462
CASE NO. 0612648
PAGE 2

There is no regulation that allows staff to discipline an inmate for refusing to speak during an interview or for not signing a compatible/or promise to behave chrono. However, the appellant has failed to supply sufficient evidence that he has been unfairly punished or that staff have violated departmental regulations. The institution has taken the position that when an individual refuses cooperate during an interview process, it is a possible indication of the individual's intent to continue existing violent behavior. This is a possible safety concern for the facility and institution. If administrative custody staff are unable to ascertain the threat status an individual inmate possess to staff and other inmates, the inmate will remain on modified program status. This practice is consistent with departmental regulations and the incremental lock and unlock process outlined in the CDC Operations Manual Section.

The appeal has been thoroughly reviewed by the appeals examiner. In this case, the appellant has failed to support his claims that the administrative staff at SVSP have violated established departmental rules and regulations. Institution staff are not punishing inmates for refusing to participate in an interview. They are simply not allowing inmates with unknown security concerns from programming with the rest of the inmate population on Facility "C." Relief at the Director's Level of Review is unwarranted. It should be noted that inmates are not mandated to provide information to assist staff in gathering facts about any incident. However, inmates are required to obey orders, to submit to cell and body searches, and to be questioned relative to their safety and involvement, or face possible disciplinary action.

B. BASIS FOR THE DECISION:

California Code of Regulations, Title 15, Section: 3001, 3005, 3270, 3271, 3291, 3300, 3380, 3391

C. ORDER: No changes or modifications are required by the institution.

This decision exhausts the administrative remedy available to the appellant within CDCR.



N. GRANNIS, Chief
Inmate Appeals Branch

cc: Warden, SVSP
Appeals Coordinator, SVSP

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
INMATE APPEALS BRANCH
P. O. BOX 942883
SACRAMENTO, CA 94283-0001

DIRECTOR'S LEVEL APPEAL DECISION

Date: JUN 12 2006

In re: ✓
✓ Gay, E-22575
✓ Salinas Valley State Prison
P.O. Box 1020
Soledad, CA 93960-1020

IAB Case No.: 0511923

Local Log No.: SVSP 05-04149

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner J. G. Arceo, Facility Captain. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: It is the appellant's position that the Department's decision to suspend program privileges to inmates during the current Facility "C" lockdown is punitive and a violation of departmental policy. He requests permanent disbanding of the policies that have no penological interests that have been implemented on Facility "C".

II SECOND LEVEL'S DECISION: The reviewer found that departmental rules require that institutional security and the safety of persons shall take precedence over all other considerations. Facility programs and services may be temporarily suspended or modified due to institutional security needs, but will be reviewed as needed. Those services or programs will be reinstated at the appropriate time and review. A comprehensive assessment of the incident must be made before returning the institution to normal programming to reduce the potential for further violence or additional disturbance. Procedures such as the interview process and incremental releases as well as other tools have been implemented to assist managers in maintaining the safety of staff, inmates, and public safety. At the time of the July 14, 2005, incident on Facility "C" in which two Correctional Officers were almost killed information received indicated that violence may not have been contained to the Facility "C". Since the original incident information gleaned from interviews, received from family members, mail, and anonymous notes, and the violent acts committed and attempted to be committed, have precluded the administration from safely returning the entire facility to normal program.

A review process is currently being used to determine which inmates can program with a high probability of nonviolence. Those inmates who have been deemed able to program will be released with a secession of reviews continuing with the remaining inmates. Those inmates who are designated as either Level III or meeting 270 design criteria have been released based on the above interview process. Some inmates who have been designated as meeting 180 design criteria have also been released. The appellant will be reviewed as to his probability to program and will be released accordingly.

Further, an anger management educational component of the unlock process will be implemented elements and additional measures to help ensure the safest environment for staff and inmates. Salinas Valley State Prison (SVSP) administration and management are committed to creating and maintaining a safe environment for staff and inmates as humanly possible.

III DIRECTOR'S LEVEL DECISION: Appeal is denied.

A. FINDINGS: It is standard practice in the Department to place a facility on modified program after major disturbances. It is also appropriate for staff to question the inmate population to ascertain the current safety of staff and other inmates on the facility. Pursuant to departmental regulations, institutional security takes precedence over all other program operations. Individual wardens are required to establish operating procedures to ensure the safety and security of the institution, staff, and inmates.

There is no regulation that allows staff to discipline an inmate for refusing to speak during an interview or for not signing a compatibility/or promise to behave chrono. However, the appellant has failed to supply sufficient evidence that he has been unfairly punished or that staff have violated departmental

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
INMATE APPEALS BRANCH
P. O. BOX 942883
SACRAMENTO, CA 94283-0001
DIRECTOR'S LEVEL APPEAL DECISION

Date: JUN 12 2006

Salinas Valley State Prison
P.O. Box 1020
Soledad, CA 93960-1020

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner J. G. Arceo, Facility Captain. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: It is the appellant's position that the current modified program on Facility "C" is being used by Facility Captain Ponder to authorize his subordinate staff to retaliate against any inmate who voluntarily refuses to participate in the forced interviews. He contends that program privileges such as receiving personal property and contact visits are being intentionally denied. The appellant requests to have all of his privileges and credit earning status reinstated. Further, he wants monetary compensation to cover the travel expenses his family has incurred when forced to have non-contact visits.

II SECOND LEVEL'S DECISION: The reviewer found that departmental rules require that institutional security and the safety of persons shall take precedence over all other considerations. Facility programs and services may be temporarily suspended or modified due to institutional security needs, but will be reviewed as needed. Those services or programs will be reinstated at the appropriate time and review. A comprehensive assessment of the incident must be made before returning the institution to normal programming to reduce the potential for further violence or additional disturbance. Procedures such as the interview process and incremental releases as well as other tools have been implemented to assist managers in maintaining the safety of staff, inmates, and public safety. At the time of the July 14, 2005, incident on Facility "C" in which two Correctional Officers were almost killed information received indicated that violence may not have been contained to that facility. Since the original incident information gleaned from interviews, received from family members, mail, and anonymous notes, and the violent acts committed and attempted to be committed, have precluded the administration from safely returning the entire facility to normal program.

The CDC Form 128-B, General Chrono is being used as an administrative tool to identify those inmates who want to program and it is another part of the critical process into transitioning Facility "C" into a programming facility. The CDC Form 128-B is being used in addition to the classification committee's hearings, continuing intelligence gathered by the Investigative Services Unit, interviews, central file reviews, and searches. Restriction of privileges including canteen, is another part of this process.

The appellant is reminded that each individual inmate is being addressed on a case-by-case basis to determine that inmate's commitment to nonviolence. While the appellant argues that the CDC Form 128-B should not be necessary, this chrono is appropriate and holds each inmate accountable for their own actions as opposed to punishing the entire group. An inmate's refusal to sign the CDC Form 128-B is a possible indication of being noncooperative and therefore, not contributing to the goal of nonviolence, and could indicate a safety concern and a need for closer review of his housing and program needs.

Further, an anger management educational component of the unlock process will be implemented elements and additional measures to help ensure the safest environment for staff and inmates. Salinas Valley State Prison (SVSP) administration and management are committed to creating and maintaining a safe environment for staff and inmates as humanly possible.

III DIRECTOR'S LEVEL DECISION: Appeal is denied.

A. FINDINGS: It is standard practice in the Department to place a facility on modified program after major disturbances. It is also appropriate for staff to question the inmate population to ascertain the

PAGE 2

current safety of staff and other inmates on the facility. Pursuant to departmental regulations, institutional security takes precedence over all other program operations. Individual wardens are required to establish operating procedures to ensure the safety and security of the institution, staff, and inmates.

~~There is no regulation that allows staff to discipline an inmate for refusing to speak during an interview or for not signing a compatibility or promise to behave chrono.~~ However, the appellant has failed to supply sufficient evidence that he has been unfairly punished or that staff have violated departmental regulations. The institution has taken the position that when an individual refuses to sign a compatibility chrono or speak during an interview, it is a possible indication of the individual's intent to continue existing violent behavior. This is a possible safety concern for the facility and institution.

If administrative custody staff is unable to properly ascertain the threat an individual inmate poses to staff and other inmates, the inmate must remain on a modified program status. This practice is consistent with departmental regulations and the incremental lock and unlock process outlined in the CDC Operations Manual.

The appeal has been thoroughly reviewed by the appeals examiner. In this case, the appellant has failed to support his claims that the administrative staff at SVSP have violated established departmental rules and regulations. Institution staff are not specifically punishing inmates for refusing to sign a compatibility chrono or who fail to participate in an interview. Staff are properly reviewing the inmate's suitability for returning to normal programming due to an unusual security threat on the facility. Classification committees, thorough file reviews, unit and cell searches, and significant staff involvement are all critical components to positively program a facility in a safe and secure manner.

Facility staff members that require an inmate to sign the compatibility chrono are not abusing their authority in regards to departmental regulations. An inmate's signature on the CDC Form 128-B, shows his willingness to participate in the incremental unlock process without fomenting violence, and that he prefers to have his case factors appropriately reviewed to determine his individual commitment to program in a safe and positive environment for the duration of his incarceration.

Administration staff at SVSP are unwilling to risk returning inmates to normal programming with other inmates without any information regarding their individual security threat level. ~~It should be noted that inmates are not mandated to provide information or assist staff in gathering facts about any incident.~~ However, inmates are required to obey orders, to submit to cell and body searches, and to be questioned relative to their safety and involvement in any incident.

The appeals examiner notes that the appellant's has included numerous other appeal issues in this appeal; however, the institution acted within departmental policy in responding to the lockdown issues only. No relief at the Director's Level of Review is warranted.

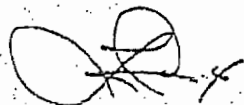
B. BASIS FOR THE DECISION:

California Penal Code Section: 2079, 2601

California Code of Regulations, Title 15, Section: 3044, 3230, 3270, 3300, 3301, 3383

C. ORDER: No changes or modifications are required by the institution.

This decision exhausts the administrative remedy available to the appellant within CDCR.



N. GRANNIS, Chief
Inmate Appeals Branch

cc: Warden, SVSP
Appeals Coordinator, SVSP

10032420-100621444 JP
#P 131102

Kern Valley State Prison

A1 204 P.O. Box 5101

Delano Ca 93216

Kern Valley State Prison
Facility A Building 1

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